

## **BOARD OF ZONING APPEALS**

### **Minutes**

**March 28, 2000**

The meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on March 28, 2000, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: FLOYD PITTS, BICKLEY FOSTER, JOHN ROGERS, RANDY PHILLIPS, JAMES B. SKELTON, BRADELY TIDEMANN, JAMES P. RUANE.

The following Planning Department staff members were present: Secretary, DALE MILLER, Assistant Secretary, LISA VAN DE WATER and Recording Secretary, ROSE SIMMERING.

Also present J.R. COX out at 3:50 p.m., Office of Central Inspection, and SHARON DICKGRAFE out at 3:15 p.m., Law Department.

**PITTS:** Calls meeting to order. Call the roll by the Recording Secretary and introduce any new members.

**SIMMERING:** Calls roll and introduces new member James P. Ruane and were you sworn in at the City Clerk's office this morning?

**RUANE:** Yes, I was.

**PITTS:** I would like to mention that James is replacing the retired Dave Babich. We need to approve the meeting minutes for February 22, 2000, has everyone had an opportunity to go over this draft?

**PHILLIPS moves SKELTON seconds the minutes for February 22, 2000 be approved.**

**MOTION carries 7-0.**

**PITTS:** Item #2, BZA 01-00.

**MILLER:** This is a case that you have heard previously and we can go through the whole thing. Or if you just want to have the applicant and the folks interested in it explain where they are in terms of negotiation. As I understand they were going to try and meet after your last hearing to see if there was some way to come to an accommodation, and it may be appropriate to let both sides explain where they think they are in that process. I will run back through slides if you want. It is up to you on how you want to proceed from here.

**FOSTER:** Don't we have several members that have never heard this case?

**PITTS:** We have at least one.

**RUANE:** And because I am new I was planning on abstaining from this item because I do not have the full history of it.

**FOSTER:** So, others have heard the case fully?

**PHILLIPS:** No, I haven't. I was absent the second meeting.

**PITTS:** Foster, you had to leave the first time I think too.

**FOSTER:** I left before it was over because I had an appointment.

**PITTS:** If we could just run through it briefly, I think that is fine, our Agenda is relatively short. We are going to impose our five minute's maximum time limit for all members of the audience who speak for or against this variance.

**MILLER:** Ok, what this case concerns is a variance to reduce the side yard setback from 6 feet, which is the standard setback in Single Family Zoning District, to 2 feet 3 inches. What apparently has happened in this particular case is identified here on the site plan. When this homes foundation was placed, it was not placed on the site so that it was outside of this side yard setback. You can see this little triangular area here, encroaches upon the setback area and the encroachment is far enough that it can not be handled administratively by staff so it is on your Agenda as a full blown variance. There is an existing home to the north, as you can see the outline here of that portion of the house, there is also a home down here. It gives you a view looking more or less straight east; this would be the area that is under consideration that is encroaching on the side yard setback. This would be the home whose side yard it is closest to, Mr. Vu's property and Mr. Smith the applicant and the builder on this home. This is a shot looking down the street to give you an idea of what the rest of the homes look like in the area. This would be looking immediately north; this is part of Mr. Vu's home. This is looking at the encroachment area; this is the encroachment area right here and this Mr. Smith's home and over here Mr. Vu's home you are looking straight west from the backyard towards the front yard.

At this point and time, staff is recommending that the request for the variance, be granted and there are four conditions outlined on page 3 of your staff report. Part of the reason we are in support of this request is that there are no windows or openings on Mr. Vu's property to the North, looking out immediately to the south and there are none on the applicant's property, in terms of direct visual contact between the two buildings. As you can see the house is in place and quite a bit of it is completed. The expense to rectify the situation would be considerable and at this point staff is still recommending approval of this, based on those four conditions on page 3. Lisa actually handled this case and she may have more information then I have if you have questions that I can't answer.

**PITTS:** Are there any questions for the staff from the bench?

**FOSTER:** Dale, will the person who made the inspection of the property be available today?

**MILLER:** I believe he is here, yes.

**FOSTER:** Should we talk with them now or should we let the applicant make some response?

**MILLER:** It is your pleasure, whichever way you would like to take it.

**FOSTER:** I would suggest Mr. Chairman that we have the inspector available at this point.

**PITTS:** Chair concurs that we have the inspector come forward.

**JIM GARICIA, BUILDING INSPECTOR, OFFICE OF CENTRAL INSPECTION.**

**FOSTER:** I am sorry that you had to be here last time and come back this time but that is the way the ball bounces. What I am wondering is do you recall when you inspected the house at the time that this problem occurred have you been there since then?

**GARCIA:** Yes, I have a couple of times.

**FOSTER:** To what extent has the house changed since the time that this matter was discovered and how much more work has been done on it?

**GARCIA:** On my initial setback inspection, I remember approving a little over 6 feet side setback. I need to mention the house to the north side had not been built and had not been staked when the footing was poured to the house in question and on my second visit, it seemed like the house grew but I could not tell without re-staking it or re-measuring it.

**FOSTER:** Has there been continued work on the house during this 2-month wait?

**GARCIA:** There was a stop work order placard by Ray Sledge, Supervisor of Central Inspection and I do not know the current statues on that but there was a work order stoppage.

**FOSTER:** Do you have any idea as to what might have caused this error in surveying or the location of the house? Do you have any thoughts on it?

**GARCIA:** The only thing that I can think is that maybe a construction worker had knocked down a corner stake and just placed it ..to his way of thinking... I just have no idea, but I knew that when I did the side setback inspection there was over 6 feet. Because in my case if it is right at the 6 foot setback I always postpone the setback inspection when we do the foundation wall to verify the corners.

**FOSTER:** Could you explain that a little bit more. You say you postpone the...?

**GARCIA:** On the initial setback and footing inspection there are two lines of inspections that we do being the standard. One is the setback and the other being the actual footing and foundation reinforcement. If the footing is close or exact say a 6 foot I will put an asterisk on the setback to verify when the walls are erected and placed final before concrete pour. This particular house that was not done so the setback that I had looked at was at least over 6 feet.

**FOSTER:** Do you have any reason to think that this was unusual, that this happened to this particular lot? Because of its shape or anything like that?

**GARCIA:** Very unusual, because I can sure tell you, I can tell the difference between 2 foot 3 inches versus 6 feet, so I have no idea how that turned out.

**FOSTER:** Thank you, Mr. Garcia.

**PHILLIPS:** I have a question because I am not clear on this still. You say you made the

inspection and at the time it was 6 feet, what were you inspecting? Where you inspecting the staking, excavation, the footing, and the foundation?

**GARCIA:** No, I locate the corner property pins, before that I identify the lot that it matches on the wooden stake and I match that to the site plan. Then, I make a visual inspection as to where the foundation wall is going to be in reference to the sideline setback.

**PHILLIPS:** So, you were working off the site plan and just basic raw ground, you were not working off of anything that the contractor put in place yet, is that what I am hearing?

**GARCIA:** That is correct.

**PHILLIPS:** So you were just working from a drawing?

**GARCIA:** Right, the site plan that is attached to the inspection card.

**PHILLIPS:** So, after it was staked, after it was excavated, after the footings were placed, no inspection at that time?

**GARCIA:** The footing inspection, on my copy of the permit card indicates that the side setback was correct and probably in most cases more than 6 feet.

**PHILLIPS:** So, you are saying, the footings were installed or they were formed up at that time the footings were in that you inspected it and you found it to be 6 feet?

**GARCIA:** Yes, at least 6 feet or more where the wall would be.

**PHILLIPS:** So, the basement was excavated, and the footings were placed?

**GARCIA:** Correct.

**PHILLIPS:** So, after that time then the foundation was moved? Is that what you are saying is that what I am hearing?

**PITTS:** I don't think he understood you correctly. You are not really saying that the foundation wall was in place are you? Had been poured? That is what Mr. Phillips is asking.

**GARCIA:** No.

**PHILLIPS:** You said, working off the footing and foundations, the footing and foundation was not in?

**GARCIA:** Well there is two pieces there, the footing is the actual bearing pad of the foundation wall.

**PHILLIPS:** I understand the structural aspects of the construction. What I am asking, you said, "That you worked off a drawing". Then I am saying after you verified the drawing, did you go back and verify anything physical that was placed by the contractor?

**GARCIA:** Yes, we do a visual.

**PHILLIPS:** No, I am saying, did you? What was the next point that you inspected the property?

**GARCIA:** Yes. The next inspection was the foundation wall re-enforcement.

**PHILLIPS:** Ok, I am talking history here. In the history of the case, you went back and saw the foundation wall and it was placed and there was still 6 feet in there?

**GARCIA:** At least 6 feet or more, yes.

**PHILLIPS:** And so after the foundation wall was placed then what?

**GARCIA:** Then, I never returned for any visual.

**PHILLIPS:** That is what I am saying, at some point something changed between the time that you physically inspected the footing, and now are you talking about the footing or the wall?

**GARCIA:** Both, the wall and the footing were correct.

**PHILLIPS:** Was it stripped out or were you looking at the forms?

**GARCIA:** I measured the inside of the forms. I measure exact wall width.

**PHILLIPS:** You were working off of the corner markers and the corner of the building?

**GARCIA:** That is correct.

**PHILLIPS:** So at some point after that then there was a conflict and an encroachment into the setback?

**GARCIA:** That I can not comment on, I never returned after that.

**PHILLIPS:** Well at some point, we are here now because there is an encroachment.

**GARCIA:** I do need to add that the house to the north had not been built yet and I remember that it had not been staked.

**PHILLIPS:** I do not think the house to the north is in conflict with it. What I am trying to do is get a chronology of when something was placed and when something became a problem. At some point, you are saying it was not a problem and what I am hearing is when the footing and foundations was placed, there was not problem, actually the house was framed up then it became a problem?

**GARCIA:** The way that I see it in the sequence of events, when I inspected this project, the footing width and the location of the exterior corner of the foundation wall was...

**PHILLIPS:** I am not trying to badger you, I am just trying to understand, because I did not hear it the first time. I am trying to get a chronology of this thing, because at some point, what I am hearing you say is that there was not a problem and now there is one. I am just trying to

ascertain when that problem occurred, whether it be through the change in the foundation plan or there was a change in the corner stakes or something, and I guess that is what I am trying to figure out. Did you verify the corners of the property in conjunction with verifying the setback?

**GARCIA:** That is correct. The third time I visited the job site is for the framing inspection. Which is usually two or three months after the foundation wall so during that time span I have no idea what takes place.

**PHILLIPS:** But, you do not know if the foundation walls were changed after the fact?

**GARCIA:** No.

**PITTS:** Any other questions from the bench for the Inspector?

**RUANE:** You used the corners that are staked by a surveyor in side setbacks?

**GARCIA:** Right. The corner post that are on the site plan that is attached to the permit card. That is the first thing I do when I arrive at the site is to match the lot numbers to the stakes in the ground and then I do my setback requirement.

**RUANE:** Did you notice any change in the setting of the corners?

**GARCIA:** No, it was a typical job site, it was not anything different. When, I was there it was like 6 feet or more. It had to be more because if it had been 6 feet I would have noted on the permit card to verify the foundation walls at the time of the second inspection.

**PITTS:** Thank you. We are going to ask if there are any comments from the applicant?

**GARY SMITH, GSA, INC. – APPLICANT:** I am going to give you a quick photograph to pass around. I just got it printed off for you to look at.

**PITTS:** We are going to ask each presenter to stay within our five-minute time frame for making their presentation.

**SMITH:** Let me help clarify what Jim Garcia, is saying up here. At the time that we had our setback inspection was August 3<sup>rd</sup> of 1999. This was approximately 3 months proceeding the inspection of Mr. Vu's property. So there was no property to the left of us, or Mr. Vu's house. What was staked on the ground and what he was determining as plus 6 foot setback was on the right side of the house. Which the current survey will clearly show that it is in fact 7.3 feet off of the back right corner to the house to the right. That is what he is referring to as a staked line. With no house on the left, that line wasn't even pulled, is why the thing got by all of us. I am going to present a secondary shot of this exactly what happened. The yellow will show clearly the encroachment of what is in the side setback. Let me give you a little history of how this thing basically occurred as stated in the secretary's report. We originally miscalculated the angles of that property. When we hired Neil's Foundations to put the property in and where the mistake occurred is he only strung the right hand property line without stringing the left. Had he strung the left it would have clearly shown that the house was setting encroached into the 6 foot side setback. Because, I did not catch it and because he did not catch it and because inspection did not catch it and it was not actually caught until Mr. Vu's property was staked and the foundation was prepared to be put in. I do not have a copy of his inspection card to tell you

when that date exactly was but I know that it was approximately three months later. Basically I explained how the side setback worked. Are there any questions?

**PITTS:** Do we have any questions for the applicant from the bench?

**PHILLIPS:** Has anything been done to the house at all since there was a work stoppage issued?

**SMITH:** No, nothing other than what we have talked about before. Ray Sledge had allowed us to go ahead and get it enclosed in and weatherproofed and we finished up what we were doing and we shut her down that was somewhere around the first of January. It has been sitting idle now for three months.

**PHILLIPS:** Is this a spec-home?

**SMITH:** No, it is sold. It is a custom home. In fact our people are here.

**PITTS:** Are there any other questions for the applicant? Thank you Mr. Smith.

**JOHN REALS, ATTORNEY FOR GSA, MR. SMITH:** I think we need to put everything into perspective about what the situation really is. GSA, did not set about to put his house in the encroachment. The foundation, as Mr. Smith just told you, and we have discussed previously, was installed by a sub-contractor. It was not until the time that Mr. Vu's foundation person began the processes of installing Mr. Vu's foundation that it was determined that there was an encroachment on the part of GSA house. Now, there is no way to grow anymore land between these two houses and as the photographs, I believe Mr. Smith has passed around to you, give you a proper perspective of what we are really dealing with. We can go on and on, but, the truth of the matter is, that if you look at what staff has suggested and if you look at the five factors that go into that decision, I believe that in this case the applicant has clearly shown that in this case that he meets those particular criteria. If he meets those criteria, I think that it is only appropriate that his application be approved.

This house is basically enclosed, it is probably 65 to 70 percent completed and there is about \$85,000 to \$90,000 worth of house setting there. It is beginning to waste; it has been three months since this process has begun. As, Mr. Smith said, this is not a spec-home. The buyers are still willing to conclude the contract and there are no windows on the two sides, ironically enough the two sides that face each other, there are no windows. There really is not a case of one person looking into another person's house or listening to their conversations. If one goes out and looks at it, aesthetically, one can not tell at the street or even from behind that there is a substantial problem. As a matter of fact the house to the south of the GSA house recently sold for more than the original buyers paid to build the house.

I guess, in closing, this is not the best set of circumstances. The foundation person, perhaps, should have exercised a higher degree of scrutiny, but GSA, as every construction company does, relies upon the abilities of the experts that they hire. The foundation company went out and they set the foundation to be most aesthetically pleasing on the lot so that it would blend in well with the other houses. Unfortunately, Mr. Neil, or the foundation organization did not put it quite where they should have put it. They still put it on the property line but they unfortunately set it within a setback. There is nothing more to be gained. It would be an absolute waste to tear this house down and in fact Mr. Smith can not afford to do that. For the reasons stated and for the reason of the staff report, we request that this Board approve the application as Mr. Smith has

submitted. I would be happy to answer any questions if anyone has any.

**PITTS:** Any questions for Mr. Reals from the bench?

**FOSTER:** I thought that from our last meeting that there was some discussion of some kind settlement or arrangement or anything like that. Did you want to discuss that?

**REALS:** Yes, we did discuss that last time. Unfortunately, that was not a workable set of circumstances.

**FOSTER:** So, that has not materialized.

**REALS:** No that has not materialized.

**PITTS:** Any additional questions for the applicant or the applicant's attorney? Is there anyone in the audience that would like to speak for the variance?

#### **TAPE CHANGE**

**MATT LILLIE, 10300 W. CENTRAL:** I am representing the buyer for the property. Since I have got into real estate, I have dealt with a lot of new construction, a lot of spec-houses and a lot of custom houses. I want to make it very clear that this is not a spec-house. I have known the buyer and have worked with the buyer for over two years. We have gone over and over several different floor plans and designed this specifically for this particular buyer; this is truly a custom home, tailor fit to these individuals. We have looked at over, conservatively I have looked at 50 lake lots in the last two years, when we were preparing to build this home. In fact, we looked at both of the lots. We looked at Mr. Vu's lot and the current lot that we are building on at the time to decide, which would be the best view for this particular home with the window package and the way that it looked out.

I have had to see the emotional pain that this has caused my buyer for the last three months and the turmoil that we have been through and the meetings and the discussions. It boils down to, I live in a modest home, and tonight my conscience is going to be clear that I got up here today and did the right thing. I am going to go home and sleep in my bed in my home that I chose to buy. All of you will go home and sleep in the homes that you chose to buy. My buyers are going to be punished because of no fault of their own. We are always talking about victims, Mr. Vu is a victim, and Mr. Smith is a victim. I do not see either of these gentlemen as a victim. I see my buyers as a victim because they had no choice, they had no choice, they had no choice at all what has happened at this point, they just want their home, they want their dream home, this is the first home that they will ever own. They have customized this house, they built it and we are literally talking and I did not bring my yardstick today and I wish I did, we are going to destroy their dreams and their hopes over 2 feet 8 inches because that is basically what it boils down to. (Took off shoes to show the distance).

**PITTS:** Let me interrupt here just a second, sir, I am not quite sure whether you are speaking in favor of the variance?

**LILLIE:** They want the variance. They are willing to accept the house.

**PITTS:** You are speaking in favor of the variance?



**LILLIE:** Yes, because the buyers are willing to accept the house. This is their dream home and they understand that there is this problem and this variance problem and they're house sits too close to the property line. But they are willing to accept it because we worked hard for two years to select this lot, and this home to build on this site. If they are willing to accept it, they are the ones that are going to be the most affected by this because it is their property. It is their property and they will own it for the rest of the time probably for the rest of their lives. This is their first and last house. We have worked hard to customize it and I guess if they are willing to accept it then I don't see why everyone else is not willing to accept it because it is going to affect their property more than it is anyone else.

If Mr. Vu still feels as if he needs compensation for the error that was made, because isn't that what this committee is about? We would not even have this committee if we were not dealing with human errors and human issues if it was a perfect world we would not be here. The house would be built perfectly. But, if there needs to be compensation lets send that to a court of law. Because even if we pass this variance more than likely there is going to be a court case outside of this committee that is going to decide the money side of this thing and who deserves what compensation. So, I just wanted to express that the buyers do want this home and they are willing to live with this variance. I think it would be sad at this point after two years of hard work to destroy their dreams because we can not agree about 5 feet of land. Any questions?

**PITTS:** Thank you very much.

**SIMMERING:** Have you signed in Sir?

**LILLIE:** Yes, I have.

**SIMMERING:** Thank you.

**PITTS:** Any other person in the audience to speak in favor of the variance?

**CHARLENE PLUSH, 2645 KEITH COURT:** I am here in behalf of a homeowner in the Bradford Additions, also the Homeowners Associations, and I am also on the Architectural Control out at Bradford. I guess there are a couple of things that my questions are and I want to submit is I really do not understand, no I do understand human error. What I do not understand is the responsibility of a builder to his sub-contractors. There are compliances, and there are regulations. Having lived in the area myself, I hate to see, "Well gosh we made a mistake so we will let this one go." Then the next house comes up and it is another 2 feet. Well gosh we made another mistake and I am 3 ¼ of the way finished and I really do not understand why this was not stopped and corrected, because I saw it in the beginning.

They talked about the visual look of it, all you have to do is go right between the two houses and it is very definitely the visual look of it. A retainer wall, that goes out, and sits right smack on the property line. You could not even put a fence up. Mr. Vu could not even put a fence there and be able to get inside his property line. I guess that really is our position as homeowners to the Board is that there are guidelines and we really need to see that everyone is responsible and that builders live by those guidelines. I have real trouble with that. He made the mistake, if he was the builder, he should have been on top of his sub-contractors. Thank you.

**FOSTER:** Question.

**PITTS:** Any questions? I am not to sure that we recognize that you were speaking in opposition to granting the variance. We were still calling for those in favor of the variance but since you have made your presentation there maybe a couple of questions from the bench.

**PLUSH:** Yes, I am very much so against the variance. I am sorry.

**FOSTER:** Would you explain again about what the retaining wall that would cause a problem in building a fence?

**PLUSH:** If one of these slides could come back up. Where the corner of the house is, the actual corner of the house, toward the end of the slide presentation. It is the picture from the rear. Thank you. This picture here, (leaving the podium to point). This is the actual corner of the house and this makes this look, what I call the retainer wall it looks almost straight. It takes up about 2 feet because if you get right to here that is exactly the full 6 feet.

**PHILLIPS:** I hate to correct you Madam, but it says according to the survey here that it is about 4 inches south of the property line. I would assume that the board lying there is supposed to indicate the property line. It is not on the property line according to the survey. Here it says the concrete wing wall is 0.35 feet south of the property line. That would indicate it being about 4 ½ inches off the property line.

**PLUSH:** Ok, when I took the visual look of it, when you take it to where the property line was a stake and I am assuming that is a 2 X 4 and I set the stake at 2 and it could have been because of the dirt but this is within 4 inches of the property line. I would have guessed it at 2 at the way I put it. This here also, I had a conversation on the variance on this when it was first posted as a variance. I was told that the variance was a 1 foot instead of it being a 6 foot. Obviously I was mislead on that. But, I think that this actually shows this wing wall as almost straight and it is what it looks like in this picture and that is very definitely not true.

My whole point is that we really need to watch what is going on in these subdivisions as far as the inspection for the integrity of what we set for the City of Wichita as guidelines. Any other questions?

**PITTS:** Thank you very much. Any other persons in the audience speaking in favor of granting the variance?

**LAURA HYATT- BUYER OF THE HOUSE:** Our realtor pretty much expressed our concerns in terms of that we have spent a long time getting this house ready to build. I am setting at home with my new furniture that has been delivered for it. Should have moved in last week. I understand everyone's concerns, Mr. Vu, there is a mistake and it has been made and I do not know how to correct that.

I am the one that will have to live with the fact that the wing wall is 4 inches from that. My builder has assured me that it can be cut back to make that more aesthetically pleasing to me and to everyone else in the neighborhood.

In terms of a fence obviously that is a concern for me but if I am willing to take that risk on myself, that should be my decision to work it out with Mr. Vu. If he feels like he still has a problem with his value of his property or whatever, I do not feel like this is the appropriate

forum, that I should not receive my house because he still has that claim against my builder.

I do not understand why I should be penalized for his claim against my builder. It is just really hard for me to get past this. It is an emotional issue, but it is also a very logical issue, I do not know how we correct the problem other than tearing the house down, I can't imagine that is an alternative but obviously that is your decision to make and I appreciate your time.

**PITTS:** Any questions?

**FOSTER:** Is this a cosmetic addition to the house, the wing wall or is this a retainer wall? Is this a necessary part of the house?

**HYATT:** It is an necessary part in terms of I think they are all generally poured that way initially and then it is to be; The length of it, I assume, is dictated by the proper drainage, is what I have been told. That it is purely for the drainage of the water that is coming off and to keep it away from the yards, and the respective yards that it is. Now, obviously I am not an expert in this field I am just explaining what has been told to me to respond to what she said about where the retaining wall lies.

**FOSTER:** You have no idea how the stake mistake occurred?

**HYATT:** Absolutely not. Certainly if I could have gone back and caught that I would have. I was at the site almost every day but I am not a surveyor and had no idea until Mr. Vu's home went up.

**FOSTER:** Thank you.

**PITTS:** Are there any others to speak in favor of the granting of the variance? If not are there any members of the audience to speak in opposition?

**HOAH VU, 2726 KEITH-- HOMEOWNER:** First, I want to pass out this paper and you take a look because in the last meeting a lot of gentlemen asking about the closest point of the two houses. Ok, on the first page I will show you what I did. I dropped two plumb-bobs from the roof of the houses and then I placed two tape measures and it's shown on the second point to the tape. On the third page is the dimensions so the closest point between two houses is 6 feet 9 1/2 inches. Last time I said 7 feet and 4 inches. It is wrong because this is the actually measurement is shown on this page right here.

Also, I want to talk about Mr. Gary Smith, he recognized the problem. I had a chance to talk to Mr. Glen Miller on the 24<sup>th</sup> of February, and he said that he talked to Mr. Gary Smith and he let him know that his property is close and right on property line. Mr. Gary Smith said no problem that he will get a variance. Mr. Glen Miller told him that he needed to talk to Mr. Vu. Because this is Mr. Vu's house and that he owned the lot and he just built the house for me. After talking with Mr. Gary Smith said no problem he will get a variance. So the variance is very easy for Mr. Gary Smith that he build anyway he wants and he just gets a variance. Even after Central Inspection stop him, and tell him to stop work on it. He still continued to work on it until now everything inside plumbing, electrical and everything is ready for inspection. So, he did not respect the law, he broke the law but he did not respect it. He intentionally broke the law. So, my property is damaged. Any variance, I respectively asking you, any variance will be denied.

**PITTS:** Any questions for Mr. Vu?

**SKELTON:** Mr. Vu, I know the last time you said that you did not consider moving the house over or working with Mr. Smith. Why is that? If you knew that he made a mistake and you went ahead and built a house. I sure look at it as you knew that it was a mistake to begin with you knew that it was a possibility that we could pass this variance at this Board so I am seeing that you might be able to live with this mistake.

**VU:** Mr. Glen Miller builds my house and I signed a contract. He located my house properly. The code requires 6 feet setback; I have over an 8 feet setback. I have no control about this; Mr. Glen Miller built my house until he finished then, ok, transferred everything over to me. I am the buyer. Mr. Glen Miller is the builder he located my house properly and nothing wrong with it. This is out of my control. Also I want to say something about Ms. Laura Hyatt just a while ago she said that it does not harm Mr. Vu. But, really she called me at work and she says she want to back out of this contract. She said that Mr. Gary Smith give him financial adjustment so that means damage.

**SKELTON:** But, you did not try to rectify any kind of an agreement, or you did not try to come to any agreement with Mr. Smith before you began construction with this house is that correct?

**VU:** I do not have a chance to Mr. Gary Smith. Mr. Gary Smith should contact me as Mr. Glen Miller told him that he needed to contact me, and he did not do that. He believes he can get variance and I do not have any chance to talk to him.

**SKELTON:** I may have misunderstand you and I am sorry if I do, but you are saying that your contractor began work on a house before he notified you of the mistake. Is that what you are saying?

**VU:** I have a chance to speak with Mr. Glen Miller on February 24<sup>th</sup>. I do not talk to Mr. Glen very often. This time I have a chance to go to his office and talk to him, he said that he told Mr. Gary Smith the problem and he told Mr. Gary Smith to call me and to talk to me because I own the lot and Mr. Gary Smith did not do that. Mr. Gary Smith said, no problem he will get variance.

**PHILLIPS:** I did not have the luxury to hear this before. But, before your contractor Mr. Miller started construction on your house were you aware of the encroachment problem on this property?

**VU:** No Sir I do not know anything about it.

**PHILLIPS:** Was Mr. Miller aware of it then?

**VU:** Mr. Miller said that after he staked his house and poured the foundations, after about three weeks I met him and he said problem, Mr. Gary Smith close to property the footings on it. So at that time he told me that he would talk to Gary Smith. Gary Smith should stop and contact me on both party talk. This is very easy to get variance is what he was saying.

**PHILLIPS:** My question, I guess, and maybe that was what Mr. Skelton was trying to figure out here is, When did you first find out that there was a problem on the adjacent property, on Mr. Smiths house?

**VU:** When Mr. Glen Miller poured footing on it and he let me know it. I didn't know anything about it because when I signed a contract so, ok, this is the plan.

**PHILLIPS:** Ok, you answered my question.

**SKELTON:** So, it was before or it was after he had poured his footing when the error was discovered? Is that correct?

**VU:** After he poured the footing, he let me know that.

**PHILLIPS:** That is the first you knew of the problem?

**VU:** That was the first time I knew the problem happened.

**PHILLIPS:** I think that is what maybe a couple of the Board members are trying to figure out. When you first became aware of the problem. Obviously the other house was already being built but at what time did you find out?

**VU:** At that time the other house was at the framing stage.

**PITTS:** Are there any more questions for Mr. Vu from the bench?

**ROBERT KAPLAN, 430 N. Market -** Let me see in a very few minutes if I can bring some perspective to this. You have heard a lot of conversation; you have heard a lot of emotional appeals. Basically, it begs the issue. I am not here to conduct a seminar on the mission of the BZA; you know what your mission is. But, your mission is very narrow and it is very restricted and it is very focused. You have five legal criteria and five criteria only under the ordinance that you can discuss and consider. Those criteria must all be met it. It is not a question of weighing, or balancing equities or who can sleep at night or who can't or whether there is damage to a neighboring property or there is not damage specifically as to a dollar value. This is a request gentleman that can not be legally granted. You can't do it. First of all this Board does not convene as a fix-it Board. You are not here for the purpose of excusing or forgiving violations of regulations, that is not your function. The purpose of this Board is to grant, in this case an area variance if you find a basis for granting.

There are several kinds of variances; this is what we call an area variance. It is a violation of a setback. You do that when special conditions prevail that mandate the granting of an area variance. It is expected that an applicant will request relief and request an area variance in a situation that meets the criteria. That applicant is expected to come to the BZA and to make that application before the work is actually done; that is your function. Not to come up here afterwards and say "Gee, I messed up. Fix it." The individual that needs to fix it is the applicant, the contractor that created it. It is fixable, don't think for a minute that it is not remedial. They can remedy this problem, and they don't have to remove the whole house and they don't have to remove the whole foundation, Mr. Phillips, is an architect and knows that. That is ridiculous. They can remedy it. Is it going to cost a few thousand dollars, to do it? Certainly it is. But who has to suffer the consequences of the error? The gentlemen who created it? Or should the consequences of his error be suffered by the neighbor who had nothing to do with it?

The uniqueness criteria, when you look at the Code, I have got copies if you need it, I am sure you have copies of the Code. The particular Code, the City Code says that the hardship can not be excused in favor of the applicant who created the problem. If he created the issue there is no jurisdiction for the Board of Zoning Appeals to rectify it for him. It has to be a situation where he is without fault. What they should have done, and I guess maybe this is strategizing, they should have let the homeowner be the applicant, not the builder because the builder has no standing before you because he created the problem.

A very, very good case, Bickley will be familiar with it, and I do not have enough time to go through this. The City of Marion Kansas our Supreme Court did a really masterful job in discussing the mission of the Board of Zoning Appeals. And the criteria and they have said in part that the uniqueness must be the particular topography of the land. Not the unique or unusual circumstances or needs of the applicant. They have said that loss of potential profit does not create an unnecessary hardship as a basis for a variance. They have said that a variance may not be granted to relieve a self-created hardship. As you go through your criteria, and I am sorry but staff is just wrong in their interpretation of the criteria, the uniqueness has to go to the topography of the site not the circumstances of the applicant. There is nothing unique about it. This house could have been properly sited, it wasn't. It can be remedied. Now why do you need to fix it for him? He can fix it for himself, it will cost him a little money but it can be done. As far as appeals and money goes, if anybody is going to appeal the case, let the applicant who created the problem do the appeal, why should the appeal be thrust on my client who had nothing to do with it? That is not fair. Just summarizing, I know that I am out of time. If you go through your criteria you simply can not make the findings you need to grant it. It is basically that simple; you can not find that this is not a self-imposed created hardship.

**PITTS:** Are there any questions for Mr. Kaplan from the bench?

**PHILLIPS:** Again, beg your pardon, I did not hear it the first time, I mean the suggestion for remedying this, I did not hear it the first time or was that brought out?

**KAPLAN:** Well, Mr. Phillips, there were, I don't know if it is appropriate. I don't want to get cross-wise with Mr. Reals either, my good friend who represents the applicant. But, yes, we did come to accommodation, my client came to accommodation with him that may not have made your job easier but we wouldn't have been here.

**PHILLIPS:** Was it a result of an amount? Or a purchase of property, or what type of accommodation?

**KAPLAN:** It was consideration that was being give to Mr. Vu, and yes, we had an agreement. Or I thought we had an agreement, as far as I am concerned, I hate to say it but Mr. Smith renege on that too. I can not do anything to please this gentleman.

**PHILLIPS:** So there has been some discussion?

**KAPLAN:** There was agreement, there was an accommodation reached. It was reached orally, but there was accommodation reached, we did not renege on it, I will tell you that, and it was not on my side of the agreement.

**FOSTER:** Mr. Kaplan, would you like to recapitulate, so to make sure that I understand this. As I understand it, Mr. Vu, found out about this about the time that the foundation for his house

was being constructed. Is that your impression?

**KAPLAN:** That is what he said, yes.

**FOSTER:** Does he have any additional setback? He is exactly on the 6-foot line?

**KAPLAN:** Bickley, I couldn't tell you whether or not, if he attempted to adjust his site plan, that his house would be accommodated on his lot with that adjustment. I don't know that, I will say to you and maybe it is not an answer to your inquiry Mr. Foster, but, I am at a total lost to understand how Mr. Vu's house is a subject matter of this discussion, I do not follow that reasoning at all. I think Mr. Phillips, said early in response to another speaker that we are not here to discuss Mr. Vu's property, we are here to discuss Mr. Smith's property. I don't think Mr. Vu's property is in an appropriate subject matter for discussion.

**PHILLIPS:** Just a point of clarification. The closest point is 8.37 feet. So that is 8 feet 4 inches off the property line, so it is in excess of the 6-foot setback.

**FOSTER:** Mr. Vu's house?

**PHILLIPS:** Yes, and his runs parallel to the south property line, of his south property line, and the encroachment area on the house in question is a corner and is not a parallel side, which is 10 feet 8 inches away.

**FOSTER:** So, we can enter that point in evidence. Has everybody here heard Mr. Phillips remarks? Is anybody different with the setback that he has mentioned on Mr. Vu's house?

**PHILLIPS:** Also, I think it may have been made early is that what the City Code calls for is a 12-foot separation between the two houses. Between two structures, so that is what we are looking at, the encroachment on the separation. I know that we are talking about encroaching into a setback, but strict interpretation of this thing is encroaching on a 12-foot separation which at 10 feet 8 inches is only 1 foot 4 inches.

**PITTS:** Is there any other questions for Mr. Kaplan from the bench?

**VAN DE WATER:** I would like to interject at this point, that, despite that, the Code says that 12 feet of separation is required between two primary structures. But, that 12 feet can be administratively adjusted by 20% and if you take that 20% off of 12 feet you are down to 9.6 feet.

#### **TAPE CHANGE**

**PITTS:** That would not be enough though, is that right?

**VAN DE WATER:** No, I am saying that administratively without coming before this Board, that distance can be reduced to 9.6 feet and they have in excess of that amount currently.

**PITTS:** Make sure that I heard you correctly, Lisa. You are saying that they have in excess of 9.6 feet now?

**VAN DE WATER:** Yes, right now, between the two structures, the closest point is 10.8 feet.

Administratively we can reduce 20% off of each of those 6-foot setbacks bringing that down to 9.6 feet. I can not say that we have ever done an administrative adjustment on two adjacent properties like that, but the potential is there within the Code.

**PITTS:** Are we saying that in addition to the, what are we calling this, concrete, retaining wall, with the retaining wall in place as it is now we have got a minimum of 9.6 feet?

**VAN DE WATER:** That can be taken care of with an Administrative Adjustment. The Code says 6 feet for each structure from the property line, and if we reduce that 6 feet by 20% on either side, potentially, that is 9.6 feet between two primary structures. Normally when we do Administrative Adjustments we do it for one property or the other, but the code does not preclude that taking place, reducing 20% on either side of the property line.

**DICKGRAFE:** But, wouldn't that have to be done at the request of both property owners?

**VAN DE WATER:** Yes.

**PHILLIPS:** That 9 feet 6 inches would not include the retaining wall.

**PITTS:** The retaining wall is there and a part of.

**PHILLIPS:** We are talking location of structure.

**PITTS:** Are there any other persons from the audience to speak in opposition to granting of the variance? If not, we will confine the discussions to the bench.

**FOSTER:** Mr. Chairman, I would like to call for an executive session. I apologize to the group here that will have to wait a little bit. But, I would like the proper motion from our attorney in order to have I would say at least 10 minutes as an executive session for this group. This would be for our new members; we have an opportunity to do that because we are a quasi-judicial body. We have some new members here, this is a very important case, this is probably the closest case that I have heard in five years on this Board, and I would like to have an executive session.

**PITTS:** Legal can you put that into proper language that we are within our legal rights.

**DICKGRAFE:** The Board just needs to move that it wants to go within executive session to confirm with legal counsel regarding legal matters and state how long you want to be in executive session.

**PITTS:** All those in favor of the motion.

**MOTION CARRIES 7-0.**

**DICKGRAFE:** How long?

**FOSTER:** Ten minutes, that should be good, we will try ten minutes.

**(RETURN FROM EXECUTIVE SESSION)**

**PITTS:** Ten minutes. It is 3:50 and we are going to call the meeting of the Board of Zoning



Appeals back to order after the recess for the executive session. We were talking about BZA 01-00 and I think we have heard from all of the applicants both for and against the variance. So we are going to restrict any future discussion to the bench.

**FOSTER:** I would like some assistants from the staff then in adding some additional wording to the staff report if I might have some help Dale, Item #1 in regards to uniqueness, I have no particular problem with it. In the adjacent property, I have a question. What about this Uniform Building Code and Fire Department standards, we really did not ask that question in the discussion what does that mean? Is there a setback in the Building Code? What does it mean in regard to or does it have anything to do with setbacks?

**MILLER:** Not technically, no.

**FOSTER:** It talks about existing separation, as meeting those codes.

**MILLER:** What it is a Fire Department standard that with 12 foot of separation and I am not an expert on this, but, with 12 feet of separation we would have enough separation to provide some protection. So the fire won't leap from one building to another, that is the whole reason for side yard setbacks. That is why they were established, to minimize the potential for a fire jumping from one building to another is my understanding. Maybe somebody here can speak directly to that particular portion of it but that is the whole point.

**VAN DE WATER:** The UBC Code that is referenced in that criteria states that 3 feet, that a structure must be 3 feet from the property line, real or imagined, so 6 feet of separation between structures according to UBC and that is for fire protection.

**FOSTER:** So, it validly, in your opinion, it meets those two standards of the UBC and the Fire Code?

**VAN DE WATER:** Yes.

**FOSTER:** What I would like you to do is, what kind of sentence could you give me, that adds the point that you made about the 9 ½ feet and so forth? Could you take a moment to phrase a sentence that we could add there and I will work on these others, while you are working on that.

**VAN DE WATER:** Ok.

**PITTS:** Is there any other discussion to come before the bench? Am I to understand Mr. Foster that you are in preparation to make a motion?

**FOSTER:** That would be correct, I am working hard on the factors.

**PITTS:** Any other discussion from the bench while Mr. Foster is working hard on the motion?

**FOSTER:** I would like to ask Mr. Phillips, would you look at the hardship one, do you have any assistance there? Do you feel that would be an appropriate statement in view of what you have heard? You are an architect and know more about structure than I do.

**PHILLIPS:** The fact that it would cost in strict compliance you would have to remove that portion of the building. So yes, if that is what you are asking, then, that is the only way that I

could see to resolve it without moving property lines.

**FOSTER:** So, you would be satisfied with that statement, as a statement of hardship?

**PHILLIPS:** Regarding the applicant? Yes.

**PITTS:** Am I understanding that you are in agreement with the sentence the next to the last sentence on hardship "Denial of this request would require the removal of the structure, and foundation?" I only address this to you because it was mentioned before that you are an architect you would know of a better fix.

**PHILLIPS:** In a literal sense yes, without remedying this thing through other means, and if we are dealing with a physical sense, yes, that is the only thing that I can see that would work.

**PITTS:** Any other discussion?

**FOSTER:** Ok, on the public interest one I believe that we could refer back to the statement that Lisa is working on, in other words, in the public interest that actually they could have proceeded to have an administrative adjustment between them should they have decided to do that, ok.

**VAN DE WATER:** First, getting back to the adjacent property addendum. We have added starting from "Fire Department standards", "additionally, per Unified Zoning Code, 20% of a building setback may be reduced administratively resulting in a minimum separation of 9.6 feet for any adjacent side yards."

**FOSTER:** Any questions?

**PITTS:** I do not have any questions on it Mr. Foster at all. I want to make sure that we stay focused here on what we are doing. Actually I am assuming here now that you are making a motion in favor of, in so doing you are getting assistants to word it properly is that right?

**FOSTER:** I would like the record to indicate that the sentence that Lisa has indicated be added to the one, in regard to the adjacent property criteria.

**PITTS:** Without objection we can do that.

**VAN DE WATER:** In regards to your public interest comment. The dimensions that I have given are potential they are not specific to this case. In this case for that to have taken place administratively there would have had to have been an boundary shift, because administratively, you can only reduce 20%, of setback, and the whole reason this is here is because the encroachment is more than 20% for that one side yard.

**FOSTER:** But, you are saying that was possible had the two parties agreed to that?

**VAN DE WATER:** If the boundary had shifted between the two properties. In other words, if the owner to the south, Mr. Smith, had purchased some of the property or by some other method, anyway the boundary moved, then both property owners could have administratively reduced the remaining side yard setback that they had and still been within the boundaries, within the Code.

**FOSTER:** In view of that rewording. Mr. Chairman, I would like to make a motion.

**PITTS:** Mr. Foster.

**FOSTER:** I would like to preface the motion by saying that I do not feel that this mistake or whatever occurred was an intentional happening and therefore;

**FOSTER moves SKELTON seconds - I move that the Board accept the findings of fact as set forth in the Secretary's report as amended and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to conditions set out in the Secretary's report.**

**MOTION CARRIES 5-1-1.**

**BZA RESOLUTION NO. 01-00**

**WHEREAS,** Gary L. Smith, GSA, Inc. pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the side yard setback from 6 feet to 2 feet 3 inches on property zoned "SF-6" Single-Family Residential and legally described as follows:

Lot 2, Block 3, Bradford North Addition to the City of Wichita, Sedgwick County, Kansas. Generally located south of 29<sup>th</sup> Street North and west of Tyler (2722 N. Keith)

**WHEREAS,** proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS,** the Board of Zoning Appeals did, at the meeting of March 28, 2000, consider said application; and

**WHEREAS,** the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS,** the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique inasmuch as the lot is somewhat "pie-shaped" in that it narrows to the rear of the lot. Additionally, the side yard building setback requirements, in addition to safety and access, are intended to allow light and air circulation for two adjacent structures; in this case, there are no windows on either home that face the shared property line in question.

**WHEREAS,** the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch the adjacent property owner has access between the two structures, there are no windows facing the home in question, and the existing separation meets Unified Building Code and Fire Department standards. Additionally, per the Unified Zoning Code, twenty percent of a building setback may be reduced administratively, resulting in a minimum separation of 9.6 feet for any adjacent side yards.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the protruding portion of the home is one of the main exterior walls. Denial of this request would require the removal of the structure and foundation. This structure is more than one-half completed; reconstruction would be a major expense.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as no public utilities or rights-of-way are being infringed upon; all public utility easements are being honored.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the spirit of the Unified Zoning Code's requirements for side yard setbacks are to provide air and light circulation and to maintain "curb appeal" and consistency in residential areas. All of these are being met with the existing building separation.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to reduce the side yard setback from 6 feet to 2 feet 3 inches on property zoned "SF-6" Single-Family Residential and legally described as follows:

Lot 2, Block 3, Bradford North Addition to the City of Wichita, Sedgwick County, Kansas. Generally located south of 29<sup>th</sup> Street North and west of Tyler (2722 N. Keith)

**RECOMMENDATION**: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to decrease a rear yard setback be **GRANTED**, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the side yard setback shall be reduced to 2 feet three inches. This setback reduction shall apply only to the structure shown on the site plan approved by the Board of Zoning Appeals.
2. The applicant shall obtain all local permits necessary to construct the indicated structure and all construction shall be completed within one year following the BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. No windows or additional structures shall be added to the north wall of the existing structure.

4. The resolution authorizing this variance may be declared null and void upon findings by the Board if the applicant has fails to comply with any of the foregoing conditions.

**AGENDA ITEM #3****CASE NUMBER: BZA2000-00001**

OWNER/APPLICANT:

Via Christi Regional Medical Center, Inc., c/o Rob Copple;  
Genesis Health Clubs, c/o Rodney Steven II

AGENT:

P.E.C., P.A. c/o Gary Wiley

REQUEST:

1. Variance to increase number of building signs permitted on a single elevation from one to two; and
2. Variance to increase the maximum square footage of signage for a single use from 32 square feet to 132 square feet.

CURRENT ZONING:

"GO" – General Office

SITE SIZE:

7.06 Acres

LOCATION:

North of Central and east of Socora (854 N. Socora)

**MILLER:** Present staff report and slides.

**BACKGROUND:** The applicant is requesting two variances. One variance is to increase the number of building signs permitted on a single elevation from one to two, and the second variance is to increase the maximum square footage of signage for a single use from 32 square feet to 132 square feet. The signage is for Genesis Health Club that is located behind other office buildings some 900 feet north of Central and east of Socora. Until recently, this facility was affiliated with Via Christi Hospital that has frontage on Central. The club has now become a separate facility and desires signage that would clearly identify the health club as a separate entity. The applicants propose two building signs on the southwest façade that overlooks the facility's parking lot. One sign is a logo type sign (8 feet in diameter) while the other spells out the name "Genesis Health Club" in letters 2 feet in height by 34 feet in length. Both signs are less than 25 feet in height. One sign is unlighted while the other is backlighted. (See attachments.) The property is zoned "GO" General Office.

Specifically, in the "GO" District, the Sign Code would permit the placement of a building sign for a single tenant that is 32 square feet in area and 30 feet high, and limited to one sign per building elevation provided that the building elevations shall have street frontage, be adjacent to nonresidential zoning or if adjacent to residential zoning there must be parking, loading or open space with a depth of 150 feet. Additionally, the Sign Code does not permit flashing or moving images on signs in the "GO" District.

The facility currently has two directional signs. One is located on Central and the other is located on Socora. Even with these two signs, it is somewhat difficult to locate the correct building due to the fitness center's location and the proximity of the other office buildings located adjacent to the site.

The surrounding uses are mixed in nature and include residential and office uses on property zoned "SF-6" and "GO". The uses facing the side of the building on which the signs are to be located are all non-residential. The residences are located on the rear and side of the fitness center and would not be able to see the proposed signs.

**ADJACENT ZONING AND LAND USE:**

NORTH	“SF-6” – residential
SOUTH	“GO” – medical office
EAST	“SF-6” – residential
WEST	“GC” – office

*The five criteria necessary for approval apply to all three variances requested.*

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the property is located off of the major roadway and is positioned behind other buildings which shield the fitness center. Further this use was formerly associated with Via Christi which has offices on Central, providing an identity for the center on Central. Now that the fitness center is not part of Via Christi, the center is in a somewhat unique location, hidden by Via Christi’s offices.

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties are constructed with similar office type buildings; or are residential uses which can not see the proposed signage.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation and C.U.P. will constitute an unnecessary hardship upon the applicant, inasmuch as the facility is not readily identified from Central. There are other buildings in the area of similar scale and appearance. The fitness center is located behind these other buildings. Additional signage would make it easier to locate the center.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale and has minimal lighting.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the signage will make it easier for customers to locate the facility.

**RECOMMENDATION:** It is staff’s opinion that the additional signage requested would appropriate for a building located on an interior lot that is located some 900 feet away from Central. Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variances to increase the size and number of signs be GRANTED, subject to the following conditions:

1. The signs shall be placed in locations that are in substantial conformance with those shown on the attachments submitted with this application.
2. The signs shall be limited to one back-lit sign that is 8 feet in diameter and one sign that is 68 feet in area less than 25 feet in height.
3. The applicant shall obtain all permits necessary to construct the signs and the signs shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**PITTS:** Any questions for staff?

**PHILLIPS:** It looks as though they are actually going back in and doing what was already there. When Via Christi had it there was a sign on both locations if I am not mistaken.

**MILLER:** Yes, the applicant tells me that it is correct. I know from visually being out there the round logo Genesis sign you could definitely tell on the building that there was a Via Christi sign.

**PHILLIPS:** I have some knowledge of this particular property so I am aware of the fact that it is there. I am just curious, was it not in compliance then? I am pretty sure that it was.

**MILLER:** The Via Christi sign, as Gary Wiley has indicated, was a religious emblem so that was not required to fall within the sign code guidelines.

**PHILLIPS:** So really this is just a matter of really cleaning up some paperwork?

**MILLER:** Yes.

**PITTS:** Any other questions of staff? Thank you, Dale. Is there anyone in the audience to speak in favor of the variance?

**GARY WILEY, P.E.C., P.A., 303 S TOPEKA, WICHITA, KS 67202:** I am here today representing actually, Via Christi Medical Center, and Genesis Health Club. Via Christi has leased this site to Genesis, about two months ago, we amended the Community Unit Plan to allow Health Clubs, General at this location. As Randy Phillips was speaking, these signs do go back basically in the same location they were before. The logo sign will cover the religious emblem that was on one of the walls. We are in agreement with the recommendations of staff and would ask for your support in allowing these two signs.

**PITTS:** Are there any questions from the bench for Mr. Wiley?

**PHILLIPS:** Is this parcel being broken up, so to speak? You are still maintaining a common access along the main drive into the middle of the property?

**WILEY:** Yes, there are two off of Socora and one off of Woodchuck, and it is all under an common access.

**PITTS:** Other questions?

**WILEY:** Thank you.

**PITTS:** Anyone else to speak on the granting of the variance? Any other person to speak in opposition? We will restrict our discussions to the bench.

**PHILLIPS:** If there are no questions, I am ready to make a motion on this because I do know the particulars to this case.

**PITTS:** The chair will recognize Mr. Phillips.

**PHILLIPS moves ROGERS seconds - I move that the Board accept the findings of fact as set forth in the Secretary's report and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to conditions set out in the Secretary's report.**

**MOTION CARRIES 7-0.**

**AGENDA ITEM #4**

**CASE NUMBER:**

**BZA2000-00002**

OWNER/APPLICANT: Universal Motor Fuels, Inc., c/o Dennis Maloney AND Income Producing Management d/b/a Wendy's (Philip Blick, Trustee of Gerald B. Maloney Short-Term Trust, & Lawrence M. Maloney)

AGENT: George Lay Signs, Inc., c/o John Lay

**REQUEST:**

1. Variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and
2. Variance to increase the maximum size of a sign from 152 square feet to 255 square feet.

CURRENT ZONING: "LC" – Limited Commercial

SITE SIZE: 1.83 Acres

LOCATION: Northwest corner of Kellogg and Greenwich (11134 E. Kellogg)

**BACKGROUND:** The northwest corner of Kellogg and Greenwich is currently developed with a Conoco gas station, a car wash and a vacant building. The corner is to be re-developed with a new Wendy's located on the corner with the car wash and gas station re-located northward, along Greenwich. The applicant is requesting two variances – an increase in height (40 feet) and an increase in area (255 square feet) – to permit a pole sign for Wendy's and Conoco which is to be located at the northwest corner of Kellogg and Greenwich, perpendicular to Kellogg.

The property is zoned "LC" Limited Commercial and has 190 linear feet of frontage along Kellogg. Two signs are permitted along Kellogg with a maximum area of 152 square feet. The applicant is willing to give up the second sign permitted along Kellogg, which provides 5 feet of additional height to the sign per the sign code. Greenwich permits 336 square feet of signage on 420 linear feet of frontage. The applicant indicates that there will be two other signs on Greenwich which combined may total 200 square feet, leaving 136 square feet of signage left over that could be applied to the pole sign on Kellogg.

In the "LC" District, the Sign Code permits pole signage at the rate of .8 square feet of signage times the frontage, up to a maximum of 300 square feet for any one sign, but in no case shall the total square footage of signage allowed exceed the total allowed by the frontage. If the sign is angled and located near the corner of the intersection, then ½ the area of the sign is counted against both frontages. Sign height is limited to 25 feet with the possibility of increasing the



height by five feet for each permitted sign that the applicant gives up, up to a maximum of 35 feet.

With respect to area, the applicant wants the sign to be at a 90-degree angle to Kellogg, which restricts the area of the sign to 152 square feet, not the 255 square feet he is requesting. If the applicant angled the sign, then he could use unused Greenwich frontage to achieve the 255 square feet. Thus the applicant needs a 68% variance to permit the increased area of signage. The applicant does not want to angle the sign, as an angled sign is not as easily seen as one that is perpendicular to the roadway.

With respect to height, the applicant desires a 40 foot tall sign on the basis that this height is needed when Kellogg is improved to freeway status. Kellogg at Greenwich is to be constructed to a freeway fly-over, similar to the Dugan Road fly-over in west Wichita, within 5 to 10 years. The projected height of the fly-over is 20-25 feet. The "Sign Code" allows 25 feet. The applicant has elected to not build a second permitted sign along Kellogg, which allows the sign at the intersection to be 30-foot sign. The applicant desires a 40-foot tall sign, so he needs a 33% variance to increase the height of the sign.

The surrounding uses are commercial; there are two car sales lots, a manufactured home sales lot, and a movie theater and aircraft manufacturer. Existing signage in the area appears to comply with current codes.

**ADJACENT ZONING AND LAND USE:**

NORTH	"LC", Limited Commercial	– commercial
SOUTH	"GC", General Commercial	– manufactured home sales
EAST	"GC", General Commercial	– car sales lot
WEST	"GC", General Commercial	–movie theater

*The five criteria necessary for approval apply to both variances requested.*

**HEIGHT:**

**UNIQUENESS:** It is the opinion of staff that this property is not unique, inasmuch as this lot is a standard rectangular lot located at the intersection of an at-grade freeway and arterial. There is nothing unique about the size, shape, topography or visibility of this property that currently justifies a height variance. The site has a clear line of site currently and it is not clear today exactly what effect the Kellogg fly-over might have on this site. In a recent consideration of a request by Wendy's to increase sign height along Kellogg in the Central Business District, where the overpass is already constructed, the BZA rejected the request. An alternate avenue that will be available to both the service station and restaurant use when the Kellogg overpass is built at Greenwich is the "logo" sign system in the highway right-of-way.

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested would adversely affect the rights of adjacent property owners, inasmuch as other owners appear to be living with signage that complies with the current code. Granting of this height variance will lead to premature additional requests at this intersection.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation does not constitute an unnecessary hardship upon the applicant, inasmuch as at this point in time no hardship exists. The site has clear line of sight today. It will be 5 to 10 years before the Kellogg fly-over is to be constructed. Further, depending on the fly-over's design, 40 feet may not be needed or may be inadequate.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as the increased height in signage would be contrary to the purpose of the sign code, which is, in part, to assist motorists to identify and find their destinations with a minimum amount of clutter and distraction in a safe and efficient manner. The code permits an administrative increase in the base height of a sign above that which is permitted by the code. It is not in the public's interest to grant increases in height without an existing hardship or uniqueness to the site. The site has clear visibility today, and the application can pursue the "logo sign" option after the fly-over is constructed, which will have less visual impact.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would oppose the general spirit and intent of the Sign Code inasmuch as construction of Kellogg is five to ten years out. Circumstances with the applicant or with Kellogg construction could change. As construction becomes more imminent, then it would be more appropriate to file for any needed variances.

**RECOMMENDATION:** It is staff's opinion that the conditions necessary for the granting of a variance do not exist. Should the Board determine that conditions necessary to the granting of the variance do not exist, then it is the recommendation of the Secretary that the variance to increase the of sign be DENIED.

**AREA:**

**UNIQUENESS:** It is the opinion of staff that this property is not unique, inasmuch as this lot is a standard rectangular lot currently located at the intersection of an at-grade freeway and arterial. There is nothing unique about the size, shape, topography or visibility of this property that currently justifies an increase in area variance. Developments that combine service station and restaurant uses on the same zoning lot have been constructed in other locations with signage that meets sign code requirements. The site has a clear line of site currently and it is not clear today what effect, if any, the Kellogg fly-over might have on this site. The applicant is permitted 155 square feet of signage if the sign is located perpendicular to Kellogg. If the sign were to be angled, then the sign the applicant is requesting would be permitted without a variance.

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested would adversely affect the rights of adjacent property owners, inasmuch as other owners in the vicinity appear to be living with signage that complies with the current code. Granting of this area variance will lead to premature additional requests at this intersection.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation does not constitute an unnecessary hardship upon the applicant, inasmuch as at this point in time no hardship exists. The site has clear line of sight today. It will be 5 to 10 years before the Kellogg fly-over is to be constructed. The fly-overs design is anticipated to be 20-25 feet in height. Also, additional signage area is not necessary since the applicant could angle the

sign and install signage as large as he requests without the variance. The hardship is self-imposed.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as the applicant could get the area he desires by complying with existing rules and angle the sign. Granting of additional signage area would be contrary to the purpose of the code, which is, in part, to assist motorists to identify and find their destinations with a minimum amount of clutter and distraction in a safe and efficient manner. The applicant has enough frontages to get the size of sign he desires he just needs to angle it to comply with current regulations. It is not in the public's interest to grant increases in area without an existing hardship or uniqueness existing on the site.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would oppose the general spirit and intent of the Sign Code inasmuch as Construction of Kellogg is five to ten years out. The applicant can legally install the size of signage he desires without a variance if he were to angle the sign. Circumstances with the applicant or with Kellogg construction could change. As construction becomes more imminent, then it would be more appropriate to file for any needed variances.

**RECOMMENDATION:** It is staff's opinion that the conditions necessary for the granting of a variance do not exist. Should the Board determine that conditions necessary to the granting of the variance do not exist, then it is the recommendation of the Secretary that the variance to increase the of sign be DENIED.

**MILLER:** This also involves a request for a variance on two items, one is to increase the height of a pole sign from 30 feet to 40 feet and the other one is to increase the maximum size of the sign from 152 square feet to 255 square feet. No, that part is not right and I will get to it and explain. The other error that is in here is on uniqueness, there is a reference to Wendy's previously requesting a increase in sign height along Kellogg, in Central Business District, and that should be Spangles, not Wendy's, across the street from each other but different locations.

Ok, this is Kellogg and Greenwich, the northwest corner. Until recently, there was a Conoco Gas Station, a car wash, and then another commercial building located back behind, at least the time that I was out there, I think it was vacant. What the applicant would like to do is place a sign like this one out there and his desire is that it be 40 feet tall, when it is placed out there. These are shots of the area the way that it was. Obviously, Schofield is still there looking east. This is the Conoco the last time I drove by was mostly demolished. The car wash as well, looking back to the west. The other commercial building located on the site, they are all being removed and may be totally gone, and I have not been by there recently. Schofield, looking east and the point of this is to show the signage that they have currently out there. The Buick area southeast of the application area, signage again, mobile homes sales that is on straight south of the application area. And then, you can see the Palace Theatre sign that is down the road a little ways and then this is a little bit of the Little Joe's sign that was there.

This gets pretty complicated and I think that is why part of the reason why the original request, I am not sure that they actually need two variances, I think the really only need one, now that I look at it. Because, what happens, is the way the code is set up along the Kellogg frontage, they have 190 feet of frontage and they are permitted 152 square feet of signage along Kellogg. They would also be eligible to have two signs along Kellogg if they desire to do that. They can agree to give up one sign and increase the height of the remaining sign by 5 feet. So, in this case the

minimum height, I mean the maximum height requirement in the "LC" District is 25 feet and if they give up one of the two signs that they could place on Kellogg, that gets them to 30 feet. They could have one sign on Kellogg, that is 30 feet in height. That in fact is what they are planning on doing, they are they are talking about only having one sign, the Wendy's and Conoco sign on there. But, the way the sign code is written, which leads to the area issue, they want 255 square feet of area, I believe. I mean 240 square feet, I think I made an error on thinking they need a second variances, that if you look at the Greenwich side, they have 420 square linear feet along Greenwich which gives them 335 square feet of signage. What they have indicated to me is that they think they will only use 200 square feet along Greenwich, which allows them to transfer 136 square feet over to the Kellogg frontage.

**VAN DE WATER:** I think that is only true if they position the signs so that it is visible from both sides.

**MILLER:** Yes, I am getting there.

**RUANE:** So, it is a 152 square feet plus how many?

**MILLER:** Plus 136, provided that they angle the sign at an angle at the intersection. The Wendy's/Conoco sign can't be perpendicular or 90 degrees to the corner, so they do need the second variance, because they do not want to turn it at an angle. But the code would permit that if they didn't and that is where it gets real confusing. Even after having written the thing I am still confused.

They do not want to turn the sign and my understanding the reason is that it makes it harder for traffic running along Kellogg to be able to see the sign because it is not faced squarely to the direction of the travel. The other aspect to that is according to Public Works, in five to ten years, this intersection will be improved similar to the intersection on the westside of Kellogg and Dugan currently has been approved. It will be that same type of a fly-over situation, at this location, and one of the criteria, which you should have received separately because we did not get it in the package. I hope you got it, we mailed it out separately.

One of the things that they were pointing out in favor of their request is that with this fly-over being constructed here. They feel like they need a sign that is 40 feet tall in order to make sure that their business is identified early enough for people to make whatever maneuvers they need to make to get off at this particular location. They are restricted to the 152 square feet that this code would allow so therefore they are wanting that 240 square feet instead of the 152 square feet. Staff is in opposition to this particular request, and I will spend a little bit of time on the reasons just so that we make sure that we have got them here.

As far as uniqueness, it is staff's opinion that with respect to height that this property is not unique, it is a rectangular lot, it is located at the intersection of an at-grade freeway and arterial today. There is nothing about the size, shape, topography or visibility of this property that currently justifies a height variance in staff's opinion. There is a clear line of site and given the fact that the fly-over is, according to Public Works is at least five years away and could be as many as ten years away, it seems to us that it is premature to request this variance. We are not for sure what is going to happen out there and until the design is actually completed and construction is underway I think that there really isn't any uniqueness and the other alternative that they would have is to use the KDOT logo system. You have seen the signs along highways

where they group commercial uses together and put their logos on there and tell you to exit at the next exit if you need their services.

As far as adjacent property with respect to height, it appears to us that the properties in the other three corners are living within the current sign code. We feel like that approval of this for additional height before there is an actual need for the height would trigger premature applications on the other three corners.

As far as hardship with respect to height, we do not think a hardship exist at this point and time. Again it is going to be five to ten years before the improvements are made and at that point and time 40 feet maybe overkill, or it may not be tall enough, we just do not know.

As far as public interest with respect to height, the whole purpose of the sign code is to assist motorist to find and identify their destination with a minimum of clutter and distraction is a safe and efficient manner. We do not feel that it is in the public interest to grant a height increase without a hardship or uniqueness existing currently on the site.

As far as spirit and intent, again, because of the time frame for when Kellogg is to be approved we do not feel it is consistent with the spirit and intent of the code. As we get closer to the construction then it may make more sense to ask for this particular request.

With respect to area, we are at the same opinion that it should be denied. Again the property is not unique; there is nothing about the size, shape, topography or visibility of the property that currently justifies an increase of area. It's simply a matter of the direction of which the sign is turned.

With respect to adjacent property, again those folks seem to be living with signage that is consistent with the code and would lead to premature applications.

With respect to hardship, again additional signage is not necessary in the since that the applicant could angle the sign and install signage as large as he request without the variance and so in fact the hardship is self imposed by the applicant himself.

With respect to public interest, the variance would adversely effect public interest because it is not complying with existing rules and with the signage that is out there today on the other three lots.

With respect to spirit and intent, again we feel like it is premature and they can install legally the size of sign that they want although they can install the height they are asking for without the variance.

So, staff is recommending denial. There should have been a site plan attached to your package as well. Let me run through the slides. These are the applicant's slides so I will stop with that. Does anybody have any questions?

**PITTS:** Just one point of clarification, Dale, you mentioned at the beginning of your presentation, as I heard you mentioned that the variances should be lumped together as a height and area?

**MILLER:** No, if I said that I did not mean to say that. They should be taken as separate items or together and voted on separately or together.

**PITTS:** Any questions for staff?

**RUANE:** Dale so much of this seems to turn on how the sign is orientated or angled which it is positioned. What would be the result if this were a rotating sign?

**MILLER:** Good question. Lisa or J.R. might be able to answer?

**COX:** It would be my opinion in the corner it would be the same, no difference.

**VAN DE WATER:** If it were rotating, they could use some of that frontage along Greenwich. Just like it was angled.

**FOSTER:** Dale, could you estimate or do you know how far the sign on Greenwich would be from the future right-of-way, or do you know the future right-of-way from Kellogg?

**MILLER:** It is my understanding that the applicant's have worked with Carl Gibson of Public Works and they have determined the amount of right-of-way they are going to need and can probably answer that. I personally did not ask him that.

**FOSTER:** I am talking about how far north would it be along Greenwich, how far away would this sign be from Kellogg?

**MILLER:** Yes, I did not ask Carl. I think the applicants know and they can tell you.

**FOSTER:** How firm do you think the idea is about how long before this would take place, five to ten years?

**MILLER:** The estimate that I got, I got from two different people, one of them thought five years was more realistic and the other thought ten years so I would say there is a five year window there.

**PITTS:** Any other questions for staff? Thank you, Dale. We will now listen to any representatives from the applicants.

**DENNIS MALONEY –UNIVERSAL MOTOR FUELS –** We are a Conoco franchise that is not on this particular corner (returning to slide) but the corner of Greenwich Road and Kellogg. I just want to take you through some of the history of what has occurred at that corner so that you have got a better understanding of why we are making this appeal.

The property was originally developed around 1960, just as a service station. In 1996, we had the property under contract with the Quick Trip Corporation. The property was to close in March of 1997, within a week of closing, Quick Trip met with the City of Wichita and decided to back out of the contract because there was a highway coming through there. We continued to operate our business knowing that the highway was coming through. We went to an adjacent landowner and in order to keep our property from essentially being condemned eventually, or being functionally obsolete by having enough property taken when they highway came through,

we ended up with a piece of property that we simply could not do anything with, we purchased additional property to the north.

At that point, we came up with a development plan as to scraping the property since it was old, somewhat obsolete, somewhat of an eye soar and several issues. We started negotiating with the City early in 1999 in terms of how much property they were going to need out there. With that in mind we would build our development in anticipating the future highway needs. We worked diligently in good faith with the City to accommodate their Kellogg expansion out there. The property mylar was signed off on the other day. For a complete re-plat of the entire piece of property, we dedicated substantial square footage, both along Greenwich and along Kellogg in anticipation of a right hand turn lane and also in anticipation of the corner looking like Kellogg and Dugan Road on the west side of town.

Over the last 12 months, we looked at several different options in terms of signage out there. Right now, if you were to drive out there, I guess 30 days ago you would have seen, on our property we had three different signs. There was a sign on the corner; there was a sign for the car wash, a pole sign for the car wash and a billboard. I guess when I looked at this, I think, what is the intent of the sign code? Well, it is to keep the City from being cluttered by signs on every building and every intersection that are obnoxious and an eye soar. Our objective with this thing is to consolidate to one sign on the corner, make it aesthetically pleasing as possible, I will admit that Conoco does not have the most attractive sign in the world, but, we have been working on them. They are a typical major oil company. They like to do things their own way.

But, we think the combining of the Wendy's and the Conoco signage on the corner, one pole sign, cleans up the intersection and is truly in the spirit of what the sign code is designed to accomplish. I have read that the City indicates that it is five to ten years away. Starting in 1996, I have heard everything from we are coming out there as soon as we get to Edgemoor. We are going to, and we have all read in the paper, that we are going to skip over this area between Edgemoor and Webb Road because there is too much contention with the church. Eventually that was resolved, then the issue with Eastborough, maybe that has been resolved, I do not know. At one time there was talk about leap-frogging out there.

I do not particularly want to go out and spend a tremendous amount of money to put up a sign and then two years from now, go turn around and go spend a bunch more money, to move the sign, relocate it, do whatever it is. I think if the City planners have told us that this thing is going to look like Kellogg and Dugan Road, we can anticipate that, and even do this thing right the first time. I am finished with my presentation. Any questions?

**PITTS:** Any questions for the applicant?

**FOSTER:** I had asked Dale early, how far north on Greenwich would this sign be?

**MALONEY:** The property we dedicated was 22.8 feet off the south property line, how far north on Greenwich? We may have a slide of the property we can show you approximately. I think there was one in your presentation, Dale. Where the existing sign is now, that is where the new property line is, it is exactly where the existing sign is. It just backs it off the north a ways, and that has been dedicated as far as I know.

**FOSTER:** Not much further north then the present sign, is that what you are saying?

**MALONEY:** Will the present sign, John would have to answer that, because I don't know, there is an overhang from the sign, I am not sure, I would guess it going to be. I think the present sign was pretty much on the old property line, so I think the new property line would be 20 feet north. And then whatever further north we have got to go to have the setback of the sign is that right? So I am guessing how far north of that property line we need to be? The sign itself can not overhang the property line. Depending on whatever 1/2 of the width of the sign is. I am going to guess what 28 feet further north?

**PITTS:** You are talking about present, what present sign are you speaking of as of this morning?

**MALONEY:** Yes. That is where the sign is now, if you go back 30 feet. I believe that new property line is about where the wall of the south wall of the car wash is right now. I looked at it when they staked it I thought it was right at where that sign is. That may be true, there was a sign there,

**PITTS:** You will have to join at the microphone if you are going to join in the discussion and give your name.

**JOHN LAY - GEORGE LAY SIGNS, INC.** – I maybe mistaken, but, I believe the corner of the property before the re-platting was cut off diagonally and ran from southwest to northeast I don't think they had a square corner on their property.

**FOSTER:** Mr. Chair, I have a question for Mr. Lay. Mr. Lay, this Board has had a lot of questions on signs on west Kellogg, your company is probably very aware of it. As to varying heights of the overpass there as it was built and re-built at the airport area, they varied a lot over a period of time. I don't know how firm, anything that is off five and ten years, my experience tells me that it is not too firm as to exact heights of what this going to be. How feasible is it for you to design a sign that could be raised up at some time? Is that a stupid question or a feasible idea? I will not be offended by your answer.

**LAY:** Mr. Foster, I believe that it would be something that would be feasible. Again our point is that if it was important enough to get to take a lot of property away from here, to make that type of planning why not plan the signs the same way? The property was carved up to accommodate what was going to happen five years from now, let us do the signs to accommodate what will happen in five years. I do have some more presentation, but before, Dennis Kirkhart from Wendy's has a few comments too.

**PITTS:** Any other persons in the audience to speak in favor of the variance?

**DENNIS KIRKHART WITH THE WENDY'S GROUP:** We have been impacted by the Kellogg reconstruction over the past many years in two locations. One of which Dale, had mentioned in the initial report, which in fact was a Spangles application for sign variance downtown, when they did they Kellogg fly-over there. We in fact elected not to get a sign variance at that location because are signs were already at about a 35 foot height and was appropriate height with a single sign to accommodate the fact that there was a fly-over built downtown. Likewise when they moved out to Kellogg and Dugan, we were impacted because we are on the Kellogg and Dugan corner and again elected not to make an application for variance at that time. Because again, our sign at a height of 32 foot for one sign only being our Wendy's sign was at an appropriate height based upon the elevation of the roadway. Again, as



Mr. Maloney has indicated, we are trying to plan in advance for what we know is going to happen. Whether it is the City coming out there in the next two, to five, or ten years. Or my understanding there is an issue before legislature right now that County may build in from the east side coming west that same roadway which will happen within a two to five year time frame.

We are told, if in fact that may occur, it really does not matter the timing as to when we need to be able to accommodate a double sign on one pole, which will substantially de-clutter that location out there. Compared to what you can see in that one photograph right there of the car dealership for example. I don't know the number, but which has eight or ten signs, I think on their location. As opposed to the three that we proposed on our combined locations, consisting of three businesses, being the single double sign for the Wendy's and the Conoco. A Wendy's monument sign on the Kellogg frontage and a Conoco car wash sign on the Greenwich frontage. We have successfully used these combo signs in five other locations with our Wendy's and Quick Trip in our other five locations. One in Park City, that is a 90 foot height for our combined Wendy's /Quick Trip sign at a square footage for the Wendy's sign only of 270 square feet where we are looking at 135 feet for a Wendy's sign in this location. We have two locations in Tulsa. There again we have used the Wendy's/Quik Trip combination signs like this on a highway location, in the City limits similar to this at a height of 85 to 90 feet in each of those location. Again, with substantial greater square footage for the combined signage and two over in Missouri. We think the combined signage makes a lot of sense in terms of de-cluttering the areas and in terms of showing presence that is attractive to the traveler.

The concept of the logo signs which Dale's report referred to, they are a good supplemental sign. But, there is no guarantee that you will have that sign or be able to maintain that sign coming off of a highway ramp or highway location. We do have twelve different restaurants for which we do have highway signs today and ten of those in the Wichita area. Unfortunately, in Tulsa, where we have five locations where we would like to have those kinds of signs, we can not get on those sign because it is based on the proximity to the entrance ramp to the closest locations, number of locations allowed on the sign are four. We have been shut out in Tulsa in five locations and we have been shut out in Amarillo in two locations and we are currently shut out in Wichita in one location where we can not get on the highway logo signs.

So again our own free standing signage at an height appropriate to accommodate the future roadway that will in fact be there is why we made the application. We are actually, as I understand it, making an application for a five-foot variance in height, because we are in the process of doing this. We are giving up one location on Greenwich Road which allows us another five foot on the corner if in fact that sign was set at a 30 angle from 90 degrees or rotated as one of the members referred to earlier. Really we are allowed a rotating sign or angle sign within the square footage allowance and within five feet of the height of allowance we are asking for a combination sign as opposed to a single sign for each of us at that location. Do you have any further questions? I will be glad to respond to them.

**FOSTER:** Sorry, to take so much of your time, I believe I can say, and I could be corrected by other members, but this Board generally over the years has looked very favorably upon these right-of-way signs that the State has put up. I am a little bit amazed, you say you have difficulty in getting on that. Is that a matter of not enough signs, costs, or what is happening there?

**KIRKHART:** It is a matter of not enough signs. We spend in the twelve locations, ten of which are in Wichita. We spend almost \$18,000 a year being on those highway logo signs.

Unfortunately, there are a limited number of signs, and they allow I think, four locations per sign. It is determined by who can go on that sign by those four closest to the interstate exit ramp. So should there be four other restaurants between us and that exit ramp, then we are precluded from being on those logo signs. Because of the rules, regulations, or the manner in which they allow people to be placed upon those signs, even if you are willing to pay for it, which we do and we are willing to pay for them.

**FOSTER:** In other words, they wouldn't add more signs?

**KIRKHART:** That is my understanding, no. We have asked them to add signs and no we have not been successful in doing that. I don't know why.

**PITTS:** They being KDOT?

**KIRKHART:** KDOT or ODOT in Oklahoma.

**FOSTER:** Thank you.

**PITTS:** Were there any other questions from the applicant? Are there any other persons in the audience to speak in favor of the variance? I am not too sure that you have used any of your five minutes yet, go ahead.

**JOHN LAY- GEORGE LAY SIGNS** – When we looked at this property we considered several options for the signs on Kellogg. First of those was to have, which would have been allowed by right, would have been to have two pole signs along Kellogg. One for Conoco and one for Wendy's for which we could have had an aggregate between the two of 152 square feet and each could have been 25 feet in height. The second option was to put Wendy's and Conoco signs on the same pole and then we could have 152 square feet but we could go up to 30 feet in height. The third option would have put both signs on the same pole, but by putting them on a angle, we could have had up to 300 square feet on such a sign, and I believe that is a little different figure than Mr. Miller had stated earlier. Since this is a highway location the extra size and height of the third option had the most appeal but tilting it off angle away from Kellogg traffic did not appeal too much. At this point, we started talking about whether the variance would be reasonable to re-orientate the larger sign to be perpendicular to Kellogg.

On the height issue, we felt that by raising the sign by a little now, we could avoid a lot of additional expense once the fly-over is built. By putting the lower sign high enough to be visible over a road way barrier or conservatively around 22 feet above grade. This by the sizes of our signs would put us at 40 feet overall. I knew that when Dennis made reference to the sign in Park City, I knew that putting a high-rise type sign like that would likely get voted down. But it seemed that taking a sign that would meet present code for size, re-orientating it by 30 degrees, and raising it five feet above the code limit seemed reasonable.

I want to advance to one of my slides. As a trade off for having the taller sign on Kellogg, we talked about how the signs would be used on the Greenwich Road frontage. Sign code will allow Wendy's and Conoco to each have a pole sign at 25 feet on the Greenwich Road side. Instead of using the standard Conoco pole sign, which we were looking at, this one which, would approximately 25 feet, we were planning to use a lower monument style sign on the Greenwich Road side. Also, this one is a picture that is in Andover-Wendy's would also use a lower profile

sign, similar to this one. However, they want to use changeable copy in addition to the Wendy's name sign.

As I read the staff report on the five conditions needed to grant a variance, I can see that we have pretty different opinions about the five conditions. On the uniqueness, staff says that it is a rectangular lot at the corner of a freeway and an arterial. When I reviewed the permit that we take out I looked at 35 locations that we have applied for signs on since the beginning of this year. I did not find any of the 35 that were corners of freeways and arterials, with the exception of the sign that we put on this particular lot.

Also, as I think of the "LC" properties on corner lots, it is rare that we have a case that the corner lot has absolutely no access from the busier of the two streets. Meaning that we need to direct motorist onto the other street to gain access to the property. As far as when I looked at the sign permits we take out, probably 90 percent of them are on property that is zoned "LC" and in most cases we have the surrounding zoning is office or residential. In this case the light commercial property is the least intensive zoning area. The nearest residential is a full block away and most of the nearby properties are general commercial and light industrial zoned. These reasons we think our property is unique when compared to other light commercial properties.

On the adjacent property issue, staff points out; signs on other nearby businesses meet current code. This may be true, but as we counted the number of signs on the Schofield car dealerships to the east, I believe there are three or four signs on each of the street frontages. Comparison, we are proposing to limit ourselves to one pole sign along Kellogg and two along Greenwich. We believe that our approach is more conservative and would protect the rights of the adjacent property owners.

The hardship issue staff says that since fly-over does not exist, no hardship exists. Value of their property has been estimated to be valued at \$7.00 and \$10.00 per square foot. The fly-over does not exist today but as conditions as proceeding with this permit, Universal has given over or around 9,000 square feet of property, or \$60 to \$100,000 worth of property to the City as a conditions of proceeding with their project, if we are unable to.

**PITTS:** Excuse me, are you going to require much more time?

**LAY:** I will see if I can cut it pretty short.

**PITTS:** Maybe a minute more?

**LAY:** Yes. Granting of variances for signs at 40 to 45 feet has been done in the past by this Board or prior Boards of Zoning Appeals. The staff report made reference to the downtown sign, which was inaccurate as far as concerning Wendy's, other signs which have been built in recent years, with greater heights, Willie C's sign at Kellogg and West is, I believe at 45 feet. This particular picture is of the McDonald's sign, which was raised from 35 feet to 40 feet, at I-135 and South Hydraulic. I believe that our request is reasonable and addresses the needs to have a clean looking package of signs to minimize the clutter and take care of the special needs of the property. I would be glad to answer any questions.

**PITTS:** Any questions for Mr. Lay?

**RUANE:** The two signs on Greenwich are both going to be those low monument signs?

**LAY:** That is what are present plans are.

**RUANE:** Is there anything that confirms that in the application or limits you to that?

**LAY:** No.

**PITTS:** Any other questions for Mr. Lay? Any other persons in the audience to speak in favor of the variance? Anyone opposed? We will restrict the discussions to the bench.

**FOSTER:** Did I hear the applicant correctly say that he had given 9,000 square feet to the City? Is that what you heard?

**PITTS:** That he was given 9,000 square feet of land?

**FOSTER:** To build the right-of-way?

**AUDIENCE:** The exact dimensions are 22.8 X 200 along Kellogg and 10' X 420 along Greenwich, and the re-plat <can't understand>.

**FOSTER:** I like that. I am being a little bit sensitive to the idea that this has created a great value to you for this corner for dedicating that 9,000 square feet of land. You own 1.83 acres, figure the percentage of land that has been dedicated to the value created for an intersection like this the public is going to build. That is just my thoughts on it. We do have quite a number of new members and it does concern me that history is somewhat of an advantage here. Mr. Phillips has been around awhile, and I know the Chairman has been here awhile too. Do you recall that the sign code was re-written several years ago, Mr. Phillips? And at that time, the level of the signs were lowered considerably and there was some incentives put in and so you are hearing some of those incentives today if you combine them or if you lower them.

If I recall and please correct me Mr. Phillips because I know that you are good memory for the area on the west side of town. But we have been very weary about approving signs that get past 35 feet and our antennas go up, they go up pretty high when you get up to 40 feet. Now, the concern that I have Mr. Chairman, is that this is far off five to ten years, a lot of changes occur in design. I don't see any need to have this any higher than necessary, and I just raise the Board, is this premature? Is this something that they could solve down the line by raising the sign at that time, when they know accurately what it could be? I raise that as a question to the other members as to their thoughts?

**PITTS:** Does anyone care to comment?

**PHILLIPS:** Well, looking back on an historical basis, I think we did approve a couple of them, and of course Willie C's was done before and I think the Hampton Inn was done before the sign code was revised. I do believe that we allowed something like 36 feet over at the Wichita Inn sign, which was based on a percentage of increase, or was based on the adjacent signage. I think that is what we kind of looked at. I think this one is the first one that we have had somebody combining signs and actually doing it kind of on a new basis since we are really talking about a new facility. Most of them have come after the fact with the exception of the Inn, and I think they were requesting something like 60 feet or something along that, the Best Western, which was out by Ridge Road.

**FOSTER:** Next to the interchange?

**PHILLIPS:** Most of them were requesting considerably higher, they were 50 to 60 feet.

**FOSTER:** I think my concern is that it does set a pretty good precedence out in the area. You recall that a lot of the presentation on the west-side of town have come back to haunt us a little bit, we raised this, we raised this, we raised this. Now you are looking at a new area and setting precedent for a very important interchange in the future.

**PITTS:** Any further discussions?

**TIDEMANN:** I have one question. I just want to clarify. They are stating that if you combine the signs, you can have a 30-degree angle, you can have up to 35 feet in a 300 square footage of signage, is this correct? This might be the question to throw out to anybody. What is the sign code for say in having it at that 30-degree angle? What does that get rather than having it at perpendicular at 90 degrees?

**LAY:** Basically it says that if you orient the sign to be visible from both streets you can combine some of the allowances for each street, and their definition of being oriented towards both streets is at least at a 30 degree angle.

**FOSTER:** And reduces the visual pollution.

**PHILLIPS:** I have a question for staff again, I think Mr. Kirkhart had a comment here earlier they were requesting the 5 foot variance, is it correct here in assuming that without the variance they could go 35 feet of 30 feet?

**MILLER:** The way the code reads is that the maximum height is 25 feet and they give up one sign they can go to 30 feet and they can get up to 35 feet but that is only on the same frontage. They can't give up a sign on Greenwich and get additional five feet on Kellogg. So in my opinion and the way that we are interrupting the code is, the best they can do is the 30-foot so they do need a ten-foot variance in order to get to 40 feet.

**PITTS:** Any additional question for Mr. Miller?

**PHILLIPS:** I have a question for the applicant, and that is Mr. Foster is right, we have taken a hard look at some of the signage issues not along West Kellogg, but the fly-over there at Main. Looking at the adjacent heights, and I think that if it was 36 feet, if I am not mistaken we allowed, and I think we are looking at a little bit of a precedence from this Board is 35-36 feet something the applicant would consider in lieu of 40 feet if the Board would want to suggest that? Is the 40 feet a magic number?

**PITTS:** You might want to come to the microphone.

**MALONEY:** Thirty-five feet is fine today. That creates us no problem today. I guess my concern is, when the highway comes and trust me, I spent the last 12 months more days in this building then I have spent in my entire lifetime, discussing this project with people here at the City. I can tell you that if it is 5 to 10 years I will be surprised, but my concern and only concern

is that 35 feet is fine today, that is going to be more than adequate with the level of grade and everything else.

My concern is that when it does come and as we have been told, yes it is coming. I have seen plans for it and it has been laid out, it is going on the south side of the intersection, are we going to have to come back again and say we need another 5 feet and at that time, are the people on this Board going to be here to remember the last go around?

**PHILLIPS:** I think that is what we are asking you. It is not a question for the Board. I think the Board is asking you if we would set this as a condition of approval that we would approve 35 feet what does that do for you?

**LAY** That Conoco sign down below there.

**PHILLIPS:** Ok, that is what I was asking if you had some criteria for why it is 40 feet. And maybe that is more of a technical question. Maybe a slide would help clarify that.

**LAY:** The two signs, the Conoco sign that we are looking at is to put up here is 6' X 20' and the Wendy's sign would be 10 feet tall and 12 feet wide. If I figure conservatively a barrier of the roadway would be 22 feet above grade. I figure at the bottom of my Conoco is going to be 22 feet I will be 28 feet to the top of the Conoco. Would leave some space between and say 28 and they left 2 feet in that would put me at 30 to the bottom of the Wendy's, 10 foot tall. We basically want 22 feet above a barrier and we realize a barrier may be higher than that, we don't think it would be any lower than that. We discussed do we want to ask for 45 feet do we want to ask for 50 feet and we decided, no, we wanted to ask for the minimum that we think will put the signs above a guess estimate of where the barrier will be. So we basically worked from the bottom up to come up with the 40 feet and not the other way around. And again the challenge was we are trying to combine the two signs, and when you mentioned most of the Kellogg projects, those weren't trying to combine to related but different businesses, most of those were dealing with a single business that they were trying to locate on those poles. Does the Board have further questions on that issue?

**PITTS:** Back to the bench now, any other discussion?

**RUANE:** I guess I will stick my neck out on this and speak in favor of the application. I think so much of this boils down to simply the 30-degree orientation issue, something that struck me. I am new to this but the question of whether not a rotating sign would even have these problems, was first what came to my mind, and it sounds like, we are at a rotating sign or were it set at the diagonal at the corner than 288 square feet would be allowable and it would simply be a question of the height.

I think what we are really talking about the matter of degrees, in particular 30 degrees as to how this is oriented. Secondly, I really prefer the combined signs and as I drive along and am sensitive to visual clutter I think signs are a necessity and to combine them does in fact provide a little bit more order and less visual clutter. I am in favorite of it. The last thing I think is unique about this site, is that as I drove this to get a look at it and I was coming from the west to the east, I was concerned about how imposing a 40-foot sign would be to the residences and the people that are west of this location.

As I proceeded east on Kellogg the line of site is obstructed a) because there is a rise and b) because of the Turnpike overpass. It did not seem to me as if this would be an intrusion upon that area between west of this site between Greenwich and I guess it would be Rock Road to the west. While a first blush I thought this sounded like it was asking a lot the more I have learned about it the more I think that it is a reasonable request and does not set such a dangerous precedent because it is a combined sign.

**PITTS:** Were you just discussing the issue or would you like to follow with a motion?

**RUANE:** Therefore I will move that the application be granted as requested subject to staff report and the recommendations set forth there in.

**FOSTER:** Staff recommends denial.

**RUANE:** Are there conditions in there? I guess indulge me that I have not been properly orientated to that. Why don't we continue to discuss and come back to me and I will frame a motion if nobody else wants to.

**SKELTON:** I will agree with Mr. Ruane, I think consolidating the signs is a good idea and I support that aspect of it and of course you know the notion to anticipate the future highway in front of there also seems reasonable. So, I am going to vote in favor of the motion.

**PITTS:** Any further discussion.

**ROGERS:** Mr. Chairman, I would vote for this case today if the applicant's future project was under construction or complete or whatever. But, I feel like at this time because of our setting a precedent that the applicant's options are not restricting him at this time. So, that is my feeling and unfortunately that I would not favor this motion.

**FOSTER:** Mr. Chairman.

**PITTS:** Excuse me a minute. Are we going to have two different motions on this, we are talking about a variance to increase the height and area. Were you addressing both of these?

**RUANE:** I am speaking in favor of both but as I look at this I can't figure a way to combine all of that into one motion.

**PITTS:** We can do a separate motion I suppose for height and area. Mr. Foster, I did not intend to cut you off.

**FOSTER:** I agree with Mr. Rogers and I suppose it has to do with being around five years and seeing these. You know I think it is good that they can perhaps anticipate where this ought to be and I imagine there is a little bit of distance here to make sure they are right so forth in the height. But, I think that it would be sometime off and I think that we would be setting a precedent that could come back to this Board as a problem.

When you get up to 40 feet we are getting up pretty high and we have been very weary in the past. I think some of you were here when we had a discussion of the MainStay Hotel and we deferred it a month to go out and take a look and go and to see if they could just see it as we drove by. Here we have nothing to go on, we have no exact height about the construction zone

and we can't go out and look at it and say that he needs 40 feet in order to clear the interchange and things like that. If you recall we had many discussions like that on the West Side of town. I believe our job is not to have the signs any higher than they have to be at the same time to accommodate elevations that do impact people in regard to where they are located.

**TIDEMANN:** As far as we are talking about clutter, and I drive Greenwich and Kellogg and it is pretty cluttered right now as we speak. I see that there is going to be a re-development of Kellogg and Greenwich and continued on east all the way to K-96 within 5 to 10 years. I perceive that whether it is 35 feet or 40 feet I don't think that it is going to be a big problem with clutter as long as they are combining signs. I would rather like one sign at 40 feet than have 2 at 30 to 35 feet. I think it does need to be stated that the Conoco sign is going to be at the level of 22 feet up for the clearance of the overpass. There is a reason for it to be 40 feet since Mr. Lay did clarify that. I would vote in favor of the motion.

**PITTS:** Any other discussion? Do we have the motion ready?

**RUANE:** This first motion has to do with regards to the height issue. Two motions, first with regards to height.

**RUANE moves PHILLIPS seconds that the Board reject the findings of fact as set forth in the secretary's report; and will review the five conditions as I see them that are those set out in 2.12.590(b) of the City code as constituting those conditions necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out now:**

**I move that the Board find the following facts exist in regards to the height:**

1. With regard to uniqueness, in particular I think that this property is unique in that this owner or this developer has demonstrated an effort to work with the City and be proactive in this development. We heard some discussion with regard to their dedication or their gift of some 9,000 feet to the City. I think that makes this a unique situation. While it true that their alternative would be to do nothing and to wait and have the City condemn that 9,000 square feet and to be paid handsomely for that. Either way they are the owners of the remaining 1.83 acres whether the City has to buy it through condemnation or whether they grant it to them through the re-plat process. Secondly, there is a point made there that talks about an alternative avenue for them to take advantage of the logo sign system. I think it was the gentlemen from Wendy's that pointed out, that it is not a given and that they would be allowed to have that signage on the KDOT sign system.
2. Adjacent property owner's right will not be adversely affected because we have not heard any objection from any adjacent property owners, so I assume that there is none. And secondly, I think the combined sign or the double sign is mindful of and appreciative of the rights of other owners.
3. Strict application of the provisions of the zoning regulations may constitute an unnecessary hardship because, I think that we heard that the 40 feet height is necessary and Bradley emphasized this early so that when the raised highway is ultimately put in there it will not obstruct view of the Conoco sign.



4. The granting of the variance will not adversely affect the public interest because of the lack of clutter and detracting given the combined sign.
5. The granting of the variance would not be opposed to the general spirit and intent of the zoning ordinance because our allowance of this at this point and time will encourage property owners adjacent to Kellogg to get out in front of the development and develop wise uses for these properties and what sign things they have. Rather than wait for the condemnation process to work all of that out.

And that all five conditions set out in Section 2.12.590(b) of the city code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions:

- 1) Limitations to two-monument style signs on Greenwich. I am not sure you follow me it was a question of overall sign density if this was going to be their only sign and their sign rights on Greenwich were going to be consumed by the low profile monument signs.

**MOTION CARRIES: 5-2.**

**RUANE:** As to the area I might yield the floor to let one of my more experienced colleagues craft that motion. Let's ditto the same conditions as the previous motion with regard to the area.

**PITTS:** Did you follow that Secretary?

**RUANE:** Is that an official way to proceed?

**RUANE moves PHILLIPS seconds that the variance to increase the maximum sign from 152 square feet 240 square feet be granted.**

**FOSTER:** Discussion Mr. Chairman, I am going to vote for this because I have no problem with the additional amount since they are combining the sign. Mine was on the height.

**PITTS:** Any other non-readiness.

**MOTION CARRIES 7-0.**

#### **BZA RESOLUTION NO. 2000-00002**

**WHEREAS**, Universal Motor Fuels, Inc., c/o Dennis Maloney AND Income Producing Management d/b/a Wendy's (Philip Blick, Trustee of Gerald B. Maloney Short-Term Trust, & Lawrence M. Maloney) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests 1) a variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) a variance to increase the maximum size of a pole sign from 152 square feet to 240 square feet on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, Universal 2nd Addition, Wichita, Kansas, TOGETHER with a tract in the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as commencing at the Northwest corner of Lot 1, Universal 2nd Addition, Wichita, Sedgwick County, Kansas; thence East along the North

line of said addition, 10 feet to the point of beginning; thence continuing East along said North line 190 feet; thence North, parallel with the East line of the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, 225.13 feet to a point on the center line of a 45 foot wide drainage easement as recorded on Film 325, Page 284; thence West along the center line of said drainage easement, 190 feet; thence South parallel with the East line of said Southeast Quarter, 225.75 feet more or less to the point of beginning. Generally located at the northwest corner of Kellogg and Greenwich (11134 E. Kellogg).

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of March 28, 2000, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590(B), Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique, inasmuch as this intersection is slated for future development of an above grade highway over Greenwich. This would make visibility of a sign associated with this property difficult. The increased height and size will help to alleviate this problem.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as a combined sign, even of the requested height and size, will help to reduce visual clutter along Kellogg.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of staff that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the proposed improvements to Kellogg may obstruct the view of a sign on this location.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the requested signage will help to reduce potential visual clutter by using one sign instead of two.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.

It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the signage will make it easier for customers to locate the business after future improvements to Kellogg.

**WHEREAS**, each of the five conditions required by Section 2.12.590(b), Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals of the City of Wichita that this request be approved for 1) a variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) a variance to increase the maximum size of a pole sign from 152 square feet to 240 square feet on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, Universal 2nd Addition, Wichita, Kansas, TOGETHER with a tract in the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as commencing at the Northwest corner of Lot 1, Universal 2nd Addition, Wichita, Sedgwick County, Kansas; thence East along the North line of said addition, 10 feet to the point of beginning; thence continuing East along said North line 190 feet; thence North, parallel with the East line of the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, 225.13 feet to a point on the center line of a 45 foot wide drainage easement as recorded on Film 325, Page 284; thence West along the center line of said drainage easement, 190 feet; thence South parallel with the East line of said Southeast Quarter, 225.75 feet more or less to the point of beginning. Generally located at the northwest corner of Kellogg and Greenwich (11134 E. Kellogg).

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that 1) a variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) a variance to increase the maximum size of a pole sign from 152 square feet to 240 square feet be granted, subject to the following conditions:

- 1) The subject property shall be limited to two (2) monument signs on Greenwich.
- 2) The applicant shall obtain all permits necessary for the installation of the requested sign.
- 3) The sign shall be installed within one year or the resolution granting this variance shall become null and void.

**PITTS:** Do we have any other business? The hour is getting kind of late.

**SIMMERING:** Just please leave those Unified Zoning Code Books please just leave those here and if you need any additional copies of any of that stuff please just ask me and I will be happy to mail those or whatever you will need. The tabs BI-laws, motions, etc. please leave those in there and we can provide you extra copies.

**FOSTER:** I would just like to make a point that I think that it would be good if we had an opportunity for more training in regard to what the sign ordinance does, there were questions raised as to what kind of case Mr. Kaplan brought up. I don't know if the new members have ever read a BZA case. I think we need to know more in regards to those things and I make that a suggestion for sometime in the future if you would like to consider that.

**PITTS:** Sometime other than our regular meeting time that the staff set some days aside?

**FOSTER:** A short meeting sometime, this is the first long meeting we have had in five months.

**MILLER:** We can try and arrange that, but, while you are all here, Rose reminded me that we do not have a second vice-chair. Whether you want to do it today or not, but at some point we need to elect somebody to feel that spot.

**PITTS:** Let's do it next time, put it on the Agenda.

**MEETING ADJORNED 4:15 p.m.**